# AFFIDAVIT OF JOHN WILLIAM WASSENAAR, M.D.

I, John Wassenaar, M.D., having been duly sworn do hereby depose and say that I make this Affidavit of my own free volition based upon personal knowledge of the facts contained herein and am of the age of majority and say:

1. I am a physician licensed to practice pediatric medicine in the State of Florida since June of 1989. As a result of my training and experience, I am familiar with and understand the standard of care, techniques, and the symptomatology in accurately diagnosing child abuse.

2. Although my Curriculum Vitae is attached hereto and marked as Exhibit "A", in brief, I graduated from the University of Florida in June of 1980 and graduated from the University of Florida Medical School in June of 1985. I performed my residency in Combined Internal Medicine Pediatrics at Duke University Medical Center from July of 1985 to June of 1989. I currently hold Board Certifications in both Internal Medicine and Pediatrics, and I am licensed in the State of Florida. I have been practicing pediatric medicine in private practice in Osprey, Florida, since 1990. One of my patients is Maya Kowalski. I also treat her brother, Kyle Kowalski.

3. I saw Maya Kowalski on at least five occasions prior to her admission at Johns Hopkins All Children's Hospital ("JHACH") in October of 2016. On each occasion, she was accompanied by her mother, Beata Kowalski. I have had the opportunity to speak with Maya Kowalski both independently and with Beata Kowalski, and then with Beata Kowalski independently. As part of my practice, I try to spend as much time as possible finding out how children are doing in their home life and whether there are any issues involving their grades, relationships and activities as these issues may bear on their overall health. I have had sufficient time to observe the relationship between parent and child to assess Maya and Beata's

relationship. Further, I have seen Maya and her brother Kyle on multiple occasions since Maya's discharge from JHACH in January of 2017.

4. I have seen and identified possible child abuse issues on multiple occasions during my practice and received training in identifying and assessing child abuse during medical school, through my post-doctorate work and during my residency.

5. I am familiar with the diagnostic criteria for Factitious Disorder as described in the DSM-5, previously known as Munchausen-by-Proxy in DSM-4. The criteria for both DSM-5 subtypes of Factitious Disorder, specifically Munchausen and Munchausen-by-Proxy are based around a falsification of physical or psychological signs or symptoms, or induction of injury or disease, associated with identified deception. Secondary gain is usually present.

6. Based upon my four (4) years of treatment of Maya and Kyle Kowalski, I have not seen at any time, either prior to Maya's admission to JHACH or at any time subsequent, any indication of child abuse. In early September of 2015, prior to Maya's diagnosis of Complex Regional Pain Syndrome ("CRPS") by a specialist, neurologist Dr. Kirkpatrick, I considered multiple causes of Maya's symptoms including "behavioral disturbance with possible conversion disorder," as reflected in my notes of 9/2/15. However, by 10/15/2015, my clinical experience with the family and my consultation with other treating physicians to confirm a diagnosis of CRPS caused me to exclude this potential diagnosis. After spending some time with Beata and Maya, I noted a relationship that was open and remarkably frank given the child's age. I confirmed the diagnosis of CRPS with her treating CRPS specialist, Dr. Kirkpatrick, and reviewed the diagnostic criteria for CRPS. There was no basis in the record for a finding of Factitious Disorder. Maya suffers from CRPS, not from some primary psychiatric disorder.

7. Maya Kowalski is extremely bright, somewhat precocious, and even at the age of nine (9), was fully capable of expressing herself, her needs, wants and desires and was well able to explain those to her mother during the time that I observed them. At no time did I believe that Maya was under the psychological control of her mother. I observed Maya inquire of her mother in a detailed manner about various treatment options and their efficacy. She was demonstrably able to contradict her mother or disagree if she felt strongly enough about the various treatments involved with her CRPS diagnosis. I found no evidence or support for a diagnosis of Munchausen or Munchausen-by-Proxy, which is typified by control issues between parent and child.

8. CRPS, previously known as Reflex Sympathetic Dystrophy ("RSD"), is, as the name relates, a complex group of symptoms involving a disruption of information to the pain receptors in the brain, which causes the patient to feel pain in various areas of the body to an extreme degree. In Maya's instance, although there is some dispute as to whether it originated as a result of her chronic asthma or whether it was as a result of a gymnastics accident, there was no doubt in my mind that the child met and continues to meet the criteria for CRPS. I base this not only on my review of the diagnostic criteria but also my clinical experience with the disease.

9. My practice also includes internal medicine for adults, and I have had previous adult cases of reflex sympathetic dystrophy/CRPS over the years. I do not claim to have the same level of specialization in the disease such as Maya's neurologists do, but I have sufficient background, training and experience to confirm a diagnosis of CRPS and to participate in a treatment regimen. In most cases where the patient is suffering to the degree Maya was, I recommend a more specialized approach based on neurological consults. To that end, I

consulted with several neurologists who formed the diagnosis and followed Maya and recommended treatment.

10. I was aware that during the course of her treatments that a Ketamine infusion including induced coma was prescribed by Maya's treating neurologists. Ketamine is a Class III medication and is approved by the FDA for treatment of CRPS. Like most Class III pain medications, it does have some associated risk, but has been shown to be effective in severe CRPS. In my clinical experience with Maya, she showed noticeable improvement after the treatments. I note from the JHACH records that the port used for the infusions, (including Ketamine), was placed at JHACH during Maya's March 2016 admission.

11. In my office, and without her Mother present, I have seen Maya's reactions to certain movements or even touching of certain areas of the body, primarily in the lower extremities, which reactions and movements, based upon my background and experience, leave no doubt that Maya is experiencing high levels of pain. I have seen no indication of secondary gain or psychologically-induced false pain that might lead to an inquiry of Factitious Disorder or subtypes.

12. My findings and the specifics of Maya's visits are contained within my records and office notes attached hereto and marked as Exhibit "B". Attention should be given to the last entry on January 17, 2017, less than a week after Maya's discharge from JHACH, where she had been kept for approximately three (3) months away from her entire family and after her mother committed suicide. Maya's condition had deteriorated to the point where she could no longer walk. She was brought in by wheelchair. Despite the fact that her mother had committed suicide and was no longer a factor in Maya's care and treatment, she continued to evidence the same symptoms of CRPS. Based on my physical examination, they had substantially worsened in

some aspects. Overall, Maya's symptoms were no better than I had witnessed in her previous visits prior to her admission to JHACH. To the contrary, the child's affect and mood was even more depressed, anxious and of course, grief stricken. She was physically weak and in substantial pain. Frankly, I do not understand how any competent physician could fail to consider Maya's level of pain and discomfort during the period I treated her both before and after this admission. The levels of pain associated with CRPS are extreme. It was and is a deviation from the accepted standard of care for a pediatrician and pediatric health care provider(s) to force a CRPS pediatric patient in extreme pain to undergo standard physical therapy in those areas affected by CRPS. This would and did directly cause unnecessary pain and anxiety to Maya.

13. I continue to follow Maya and aspects of her condition have slowly improved over the past year and a half. Unfortunately, as a result of his experience at JHACH, Jack Kowalski has a reluctance to become involved in any further significant treatment for Maya due to the fear that she or Kyle will again be removed from his care for no substantiated reason. This complicates her treatment.

14. Because of the severity of this situation and my concern for the patient, I have received through the course of these proceedings voluminous medical records which I do not attach but which I identify in the list attached and marked as Exhibit "C." These include the timeline and investigation prepared by Tashawna Duncan, Ph.D., a clinical psychologist, whom I see from the records was appointed by the Circuit Court to investigate the circumstances surrounding Maya being taken away from her family and treated for psychiatric disorders rather than for her CRPS. I have also been provided with the report of Dr. Pradeep Chopra, an Associate Professor of Neurology at Brown Medical School, who confirms the diagnosis of CRPS and a treatment regimen which includes Ketamine infusions as one of several treatment

options. I have received the records of neurologist, Anthony Kirkpatrick, M.D., who also confirms the diagnosis of CRPS. I would note that based upon my examination of Maya throughout the course of the Ketamine infusions I did not see any debilitating side effects from the treatment itself. I did notice a decrease in her sensitivity and pain responses after the treatments, which I believe my office notes reflect.

15. I am familiar with Dr. Sally Smith, a Pediatrician practicing in the Tampa Bay area. I have reviewed her report attempting to substantiate a diagnosis of Munchausen-by-Proxy which served as a basis of taking Maya away from her family. In reading her forty-six (46) page report, the behavior described is completely uncharacteristic of Maya's general personality. Moreover, although Beata Kowalski, as a Registered Nurse, had more medical knowledge than most parents, I saw nothing to indicate that she was anything other than a loving, caring mother who was anxious in the way that every parent is when their child has an illness which does not appear to be getting any better. I personally have never witnessed Beata act inappropriate, rude or abusive towards her daughter. In my opinion, given Maya's intelligence and articulation, such approaches would be useless. Maya Kowalski is not a child, even as an adolescent, who responds to suggestive or bullying behavior. In short, Beata could not have forced Maya to endure the continuous Ketamine treatments for her CRPS unless Maya was convinced it was helping her.

16. In evaluating a suspected child abuse situation involving Munchausen-by-Proxy or other Factitious Disorder, an experienced pediatrician will first take all reasonable steps to rule out the working "Non-Munchausen" diagnosis. In this instance, that would involve a careful review of the patient's medical history and the opinions and course of treatment of those doctors who have formed the initial diagnosis and thereafter followed the patient. In this case, that

would include reviewing the records of Maya's treating neurologists, at least two of whom are experts in CRPS, and the records of the child's pediatrician (i.e., me), to see whether there is an independent view from the diagnosing physicians either confirming or rejecting that diagnosis based on clinical experience. A careful practitioner in a hospital setting would also review prior admissions of the patient. In my opinion, it is a deviation from the accepted standard of care for any JHACH employee or contracted physician specializing in pediatrics to fail to review prior admissions at the same hospital under these circumstances before making a diagnosis of Munchausen-by-Proxy and/or Conversion Disorder.

17. The only contact I have had with either JHACH or the State of Florida was a call at some point in mid-October from a female who identified herself as a resident from the hospital who inquired about Maya's overall health. The phone call lasted less than five (5) minutes and was superficial. The caller enquired about Maya's overall health and confirmed the fact that I was her pediatrician. There was no discussion of CRPS, nor was there a discussion of Munchausen-by-Proxy or any issues of child abuse or alternate diagnoses. The self-identified resident did not inquire about the use of Ketamine to treat Maya. That was the sole contact I have had with the group of physicians, healthcare providers, DCF contractors and any others involved in Maya Kowalski's separation from her family. It is probable that at some point my office processed a request for records, though I do not see in my review evidence of that until after Beata's death.

18. The inquiry by the self-identified resident was inadequate to assist a pediatrician or any other physician trained in identifying Factitious Disorder or subtypes, to confirm or make such a diagnosis. In my opinion, this is a deviation from the accepted standard of care by Smith

and the other treating pediatricians at JHACH and had a direct effect on the negative outcome of the patient.

19. In the event a physician confirms to their satisfaction that the diagnosis (in this case of CRPS) was correct, or at least had a reasonable basis, then the inquiry of whether the patient, specifically Maya, was a victim of Munchausen-by-Proxy should have been excluded. I see no consideration of intermediate measures. Instead, from my review, the pediatric team at JHACH appeared more interested in supporting a conclusion than engaging in an objective medical evaluation.

20. Isolating a child from her entire family was and is a drastic measure which immediately causes additional stress on both the child and family. It is a measure that should not be recommended absent a firm diagnosis of child abuse that will lead to *immediate* harm to the child. Those circumstances never existed in the case of Maya and her parents. The decision by Sally Smith and the pediatric care team[1] at JHACH to continue to separate Maya from her family was and remains a deviation from the accepted standard of care and in my opinion caused irreparable harm and injury to Maya, her brother Kyle, father Jack and mother Beata Kowalski. It is irreparable in that Beata killed herself. It is irreparable in that Maya will always have a fear of inappropriate care and pain caused by her doctors that will affect her willingness to engage in ongoing medical monitoring and treatment.

21. Maya's attorneys have provided me with the records from Maya's treatment at JHACH, including an admission approximately one (1) year prior to Maya's October 2016

[1] I reserve the right to amend my testimony here with the specific physicians, nurses and social workers to whom this opinion is directed until I am sure of who among the pediatric care team was involved in these diagnoses and recommendations. The records I have reviewed do not confirm which health care providers were supportive of the erroneous diagnosis and recommendations in this case other than pediatrician, Sally Smith, M.D. I do not wish to involve or malign any physician or health care worker who was opposed to the above course of action leading to the injury to Maya Kowalski and her family.

admission. It is my opinion, based on my background, training and experience as a doctor of Pediatric Medicine for the past twenty-seven (27) years that Dr. Sally Smith, and those pediatricians and pediatric health care providers of JHACH involved in diagnosing Conversion Disorder, Factitious Disorder and/or that Maya was a victim of Munchausen-by-Proxy, (*see* footnotes 1 and 2, *supra*), deviated from the accepted standard of care for medical care providers in this State in their care of Maya Kowalski. My opinion, based upon my background, training and experience, is that the standard of care requires the healthcare provider to perform a careful review of the child's medical history and properly include consultations with the child's treating physicians. Where there is an unusual disease, injury, or disorder involved or suspected, a careful review of a child's medical history properly includes further consultations with experts in the relevant specialties to confirm that the suspected diagnoses of Factitious Disorder or subtype Munchausen-by-Proxy not only exists, but is not questionable given other possible diseases or injury as a cause for the child's symptoms. The standard of care requires these consultations with experts as a prerequisite before deciding to take a child away from his or her parents. I do not see where this was ever done.

22. Because of this, it is my opinion that the conduct of Maya's pediatricians and pediatric healthcare providers at JHACH (*see* footnotes 1 and 2, *supra*), including but not limited to Sally Smith, M.D., fell below and disregarded the accepted standard of care in first, diagnosing Munchausen-by-Proxy as a basis of child abuse; second, failing to properly research, evaluate and consider the diagnosis of CRPS; and third, endorsing, recommending and furthering a course of treatment involving painful and unnecessary physical therapy for their patient, Maya Kowalski. This negligence directly caused damage and injury to Maya, Kyle, Jack and Beata Kowalski.

23. Moreover, it is my opinion, based upon my background, training, and experience that Dr. Sally Smith and the pediatric doctors and health care team at JHACH who treated Maya during her hospitalization beginning in October of 2016, deviated from the accepted standard of care in failing to properly treat Maya for her confirmed CRPS diagnosis, and their actions led to an exacerbation of Maya's symptoms, increased pain and suffering, and emotional trauma.

24. It is understood by physicians in Pediatric Medicine that pulling a family apart absent dire necessity cannot but have the most onerous affect on the child's life and future. Competent pediatricians recognize that child abuse occurs and that in extreme circumstances the child must be protected by separation from his or her mother or father, but such an extreme remedy should *never* be considered absent solid proof. The sense of loss and aloneness a minor child feels upon separation from his or her parents is difficult to quantify. Suffice it to say that based on my background, training, and experience in the area of Pediatric Medicine, and to a reasonable degree of medical probability, the actions of the JHACH health care providers in advocating separating Maya from her family, isolating her for months, and inflicting emotional trauma on Maya and her family, ultimately leading to the subsequent suicide by her mother, created a void in the Kowalski family that has and will produce permanent injury and loss now and in the foreseeable future.

25. My opinions expressed herein are all to a reasonable degree of medical certainty. I use the term deviation from the accepted standard of care to denote negligence.

FURTHER AFFIANT SAYETH NOT

JOHN WASSENAAR, M.D.

**VERIFICATION**

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief. Pursuant to Fla Stat. §92.525, any person who shall willfully include a false statement in the document shall be guilty of perjury and upon conviction shall be punished accordingly.

JOHN WASSENAAR, M.D.

STATE OF FLORIDA )
COUNTY OF Sarasota )

The foregoing instrument was acknowledged before me on September 13, 2018, by John Wassenaar, M.D, who is personally known to me or who has presented the identification below and who did take an oath that the information contained herein is true and correct to the best of his knowledge and belief.

Notary Signature

Print Name: Devin L. Burngarner
Commission No.: FF 964825
My Commission Expires: February 25, 2020
Type of Identification: personally known

DEVIN L. BUMGARNER
MY COMMISSION # FF 964825
EXPIRES: February 25, 2020
Bonded Thru Notary Public Underwriters